

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C. J. POTTER, IV, ESQ.
Nevada Bar No. 13225
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, NV 89102
Ph: (702) 385-1954
Fax: (702) 385-9081
Attorneys for Defendant David H. Bundy

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO.: 2:16-CR-00046-GMN-PAL

DEFENDANT DAVID H. BUNDY'S
MOTION TO REOPEN DETENTION
HEARING

v.

DAVE H. BUNDY, erroneously referred to as
DAVID H. BUNDY, et. al.

Defendants.

Comes now the Defendant, DAVE H. BUNDY, erroneously named as DAVID H. BUNDY by and through his attorneys, CAL J. POTTER, III, ESQ. and C.J. POTTER, IV, ESQ, and respectfully moves this Court to reopen the detention hearing pursuant to 18 U.S.C. §3142(F), and to order the release of Mr. Bundy with the necessary conditions as articulated in 18 U.S.C. §3142(B).

This motion is based upon discovery received, the following analysis, all papers and pleadings on file herein, as well as the representation of Sheriff Robert A. Dekker of Millard County, Utah, together with arguments of counsel at the time of the hearing in this matter.

DATED this 21st day of April, 2016

/s/ Cal J. Potter, III, Esq.
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C.J. POTTER, IV, ESQ.
Nevada Bar No. 13225
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, Nevada 89102

1 a strong sense of responsibility to his wife and six children and lives with his in laws Steven
2 and Ann Stoddard. His children range in age from one to fifteen years. Thus, Mr. D. Bundy's
3 ties to Delta, Utah go well beyond his immediate family and include his wife's extended family
4 who have lived in Delta for more than forty years. In addition to his deep roots in Utah, the
5 following factors highlight his character and assurance of appearance and safety to the
6 community:

- 7 (1) Mr. Bundy owns Longview Construction & Development, Inc. and
8 Underground Contractor. His company is licensed in Arizona, Nevada, and
9 Utah and specializes in excavation, grading, and concrete work. The company
10 has been in business for approximately fifteen years and, during that time that
11 the economy has fluctuated, and has employed from five to sixty-five
12 individuals. Most of the company's work is done in Mesquite, Nevada; St.
13 George, Utah; and Littlefield, Arizona. Mr. D. Bundy also pays his taxes and is
14 a productive member of his community and is active im mainstream polictics as
15 a member of the Republican Party.
- 16 (2) Mr. D. Bundy has been a licensed pilot since 1998, with the Federal
17 Government. He has his instrument rating as a fixed wing pilot, licensed with
18 the Federal Aviation Administration. He has flown part-time both commercially
19 and as an instructor. Mr. D. Bundy is also attending College to attain his
20 Bachelor of Science Degree in Aviation Administration.
- 21 (3) Mr. D. Bundy has no criminal history and, until this incident, has had no
22 adverse contact with law enforcement. While Mr. Bundy has provided the court
23 with outstanding references from numerous individuals, most significant to this
24 point are the references from the Millard County Sheriff and Delta City Mayor.
25 Mr. D. Bundy also does not have a legal or financial interest in the "Bundy
26 Ranch".
- 27 (4) Mr. D. Bundy also has long standing ties with his church and has a well
28 acknowledged history of assisting friends, neighbors and fellow congregants in

1 the community and in the mission field and served on a two year mission in the
2 Portland, Oregon and Southern Washington area.

3 (5) In 2013 Mr. Bundy worked cooperatively with the BLM allowing them access to
4 his Utah property in order to fill their helicopters with water to fight forest fires
5 and does not harbor anti-Federal Government beliefs or anti state government
6 beliefs.

7 (6) Mr. D. Bundy did not have a firearm on his person or in his vehicle when he
8 was arrested on April 6, 2014 while parked off road. Similarly, on April 12,
9 2014, he remained unarmed at all times as he assisted Sheriff Gillespie and then
10 Undersheriff, Joe Lombardo and he negotiated with the FBI Special Agents in
11 Charge for a peaceful de-escalation of the government's standoff in the wash.
12 Indeed, now Sheriff Joe Lombardo complimented Dave Bundy for his assistance
13 with the armed protesters as Dave acted as a peacemaker.

14 (7) Mr. D. Bundy provided no opposition to his arrest on March 3, 2016, while at
15 his property in Delta, Utah where he is building his family's home. The FBI
16 arrived with perhaps as many as 20 vehicles, agents dressed in military style
17 gear, each armed with assault rifles. Mr. D. Bundy cooperated fully with the
18 authorities and the arrest was effected without incident.

19 ARGUMENT

20 Title 18, United States Code, Section 3142(f) provides for review of a detention
21 hearing. It states that:

22 The hearing may be reopened, before or after a determination by
23 the judicial officer, at any time before trial if the judicial officer
24 finds that information exists that was not known to the movant at
25 the time of the hearing and that has a material bearing in the issue
whether there are conditions of release that will reasonably
assure the appearance of such person as required and the safety of
any other person and the community.

26 As outlined in the attached letters, the actual scope of Defendant's, family ties, and
27 financial support, wee not able to be properly considered when assessing Defendant's risk of
28 flight or danger to the community. As such, this is a request to re-open the detention hearing.

1 It is worth noting that of the four overarching factors to be considered under 18 U.S.C.
2 § 3142(g), the weight of the evidence is considered to be the least important factor by courts.
3 *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). Further, while there is a
4 presumption of detention in this case given the serious nature of the charges, such presumption
5 is rebuttable. 18 U.S.C. § 3142 (e). Once the presumption is involved, the Defendant only need
6 to present some credible evidence that they are not a flight risk or danger to the community to
7 overcome the presumption of detention. *See e.g. United States v. Dominguez*, 783 F.2d 702,
8 707 (7th Cir. 1986). (Defendant's burden of production is not heavy, but must produce some
9 evidence). In this case the attached letters clearly are more than just some credible evidence
10 that Mr. D. Bundy is not a flight risk or danger to the community. According to 18 U.S. C. §
11 3142 (g), "family ties" are specifically cited as criteria to consider when a court is to assess an
12 individual's history and characteristics.

13 Title 18 U.S.C. §3142, et seq., provides that an individual facing trial should be
14 released with the least restrictive condition or combination of conditions reasonably necessary
15 to ensure the safety of the community and secure the appearance of the defendant throughout
16 the proceedings. 18 U.S.C. §3142(c). "Only in rare circumstances should release be denied, and
17 **doubts regarding the propriety of release should be resolved in the defendant's favor.**"
18 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991) (Emphasis added), citing *United*
19 *States v. Motamedi*, 767 F.2d 1403 (9th Cir. 1985).

20 The statute articulates the factors that must be considered in determining whether
21 conditions exist that will address the government's concerns for safety and appearance. The
22 factors include: (1) the nature and circumstances of the offense or offenses charged; (2) the
23 weight of the evidence against the defendant; (3) the defendant's personal characteristics,
24 including but not limited to family ties, employment status, community ties, and criminal
25 history; and (4) the nature and seriousness of the danger to persons or the community that
26 would be present upon release of the individual. 18 U.S.C. §3142(g). Although the nature of
27 the charges may create a presumption that no conditions or combination of conditions will meet
28 the government's regulatory interest in community safety or the defendant's future appearance,

1 that presumption is **rebuttable**. 18 U.S.C. §3142(e)(2).

2 In support of their argument to detain Mr. D. Bundy, the government focuses large
3 portions of their memorandum filed with the District Court of Utah describing the beliefs and
4 actions of Mr. D. Bundy's father and co-defendant, Cliven Bundy. (Doc. 10). At the heart of the
5 government's argument is the presumption that Mr. D. Bundy benefits from the actions of the
6 others because he is related to the owner of the ranch where the cattle run and is, therefore,
7 inextricably intertwined with all of the alleged actions that occurred in April, 2014. The facts
8 and exhibits suggest otherwise. Indeed Mr. D. Bundy never was armed and never went to
9 Oregon with his family members.

10 While Mr. D. Bundy loves his extended family and expresses an understanding of their
11 stated cause, that does not mean that he supports all tactics employed. This was never more
12 evident than when he became the conduit between the Citizen Protesters, the Clark County
13 Sheriff and the Federal agents on April 12, 2014. It is clear from the exhibits, both government
14 and defense, that Mr. D. Bundy was the reason and the means by which the matter was
15 peacefully de-escalated and the people dispersed without any injuries. Significantly, then
16 Assistant Sheriff Lombardo indicated that, although the situation was tense and individuals
17 were angry, Mr. D. Bundy did not yell, use profanity, or point a gun during the negotiations.
18 Mr. D. Bundy adamantly disagrees with the government's allegations and characterizations of
19 the events and statements leading up to these charges. While he will zealously defend against
20 these charges, there can be little disagreement that, at all times relevant to this matter, Mr. D.
21 Bundy remained unarmed and calmly helped bring the protest to a conclusion.

22 **A. Mr. Bundy's Devotion to the Care of His Family and Extensive Ties to His**
23 **Community Demonstrate He is Not a Risk of Non-Appearance.**

24 Mr. D. Bundy has a wife and family of six young children, well established in Delta,
25 Utah. His construction company, employees, and business associates are in the Mesquite,
26 Nevada and St. George, Utah area. He does not live on or near Cliven Bundy's ranch, nor does
27 he maintain "an active presence" at the ranch as suggested by the government. (Doc. 10, pg.
28 31). The government's memorandum completely ignores the numerous factors that speak to the

1 assurance that Mr. D. Bundy will remain in Delta, Utah and meet all court obligations as
2 required. Instead the government relies on the unsupported allegation that "[i]f D. Bundy were
3 released little could be done to prevent his return to Bundy Ranch. ... Thus, Bundy would pose
4 a significant risk of non-appearance, allowing him to bunker down at the Bundy Ranch...."
5 (Doc. 10, pg.32).

6 The government points to no evidence establishing that Mr. D. Bundy has or would
7 barricade or fortify himself at Cliven Bundy's property, thereby abandoning his wife, children,
8 livelihood, church, in-laws, and friends. While disagreeing with BLM's handling of the grazing
9 fees alleged to be owed by his father, Mr. D. Bundy willingly worked with BLM in 2013 to
10 allow helicopters to be filled with water on his property. This is not the expected behavior of
11 someone who supposedly declared war on the Federal Government or manifests an intent to
12 flee his court obligations.

13 **B. Mr. Bundy Does Not Pose a Significant Danger to Persons or the Community.**

14 At no time during Cliven Bundy's dispute with the BLM has Mr. D. Bundy taken up
15 arms against law enforcement on behalf of his father or anyone else. Throughout the subject
16 events Mr. D. Bundy was the person through which the citizens and law enforcement
17 communicated. While he negotiated firmly for a desired result, he at no time carried or
18 advocated pointing a gun at any law enforcement personnel, or in any other way encouraged an
19 assault to achieve a desired resolution. Mr. D. Bundy emphatically denies the allegations,
20 characterizations, and charges leveled by the government. Certainly the Bail Reform Act of
21 1984 recognizes that all defendants are presumed innocent until proven otherwise.

22 Significantly, in addition to none of the government exhibits showing Mr. D. Bundy
23 armed or dangerous, the sheriff of Millard County, Robert A. Dekker, submitted a reference
24 letter in anticipation of the detention hearing. Sheriff Dekker reports that Mr. Bundy has been a
25 resident of Millard County for three years and "has been an asset to [the] community." Most
26 importantly, in addition to being involved in the school system and regularly attending church,
27 Mr. D. Bundy "**has not been arrested or served any civil papers**" from the Sheriff's Office
28 (emphasis added). The Sheriff further indicated his certainty that, not only would Mr. D. Bundy

1 return to Delta, Utah but that there was a great support system for him in the community. It is
2 safe to say that, as a fellow law enforcement officer, the Sheriff would be particularly sensitive
3 to the possibility that an individual might pose a risk of flight or to the safety of the community.
4 That clearly is not his impression of Mr. D. Bundy. (See Exhibit B, Letter from Millard County
5 Sheriff Robert A. Dekker).

6 Similarly, although not personally acquainted with Mr. D. Bundy, the Mayor of Delta
7 City, Gayle Bunker, wrote a reference letter indicating that the City had not had any adverse
8 situations with Mr. D. Bundy. "He has a clean record with Delta City." Additionally, the Mayor
9 has known Mr. D. Bundy's wife and her family for many years, indicating that they are "very
10 good law abiding people." Again this speaks to Mr. D. Bundy's compliance with city laws, as
11 well as the fine, well established people he surrounds himself with in his town of residence.
12 These are the same people that constitute his support network while he awaits resolution of the
13 pending charges. (See Exhibit C, Letter from the Mayor of Delta City, Gayle Bunker). Mr. D.
14 Bundy has reference letters from work associations (See, Exhibit D, Letter from George P.
15 Timinskas P.E, from Mezona Engineering, Bruce Crouch from Pioneer Storage, Chuck Bentley
16 from Pride Contractors, Rulon Harper from Harper Construction, Matt McDuffie from Harper
17 Construction, Rachel Adams from Aviation Services Group, Trent Reber, Stephen Timinskas,
18 Aaron Waite, and Robert Anderson). Mr. D. Bundy has reference letters from Neighbors and
19 Acquaintances(See Exhibit E, Letter from Lynne Harris, Duke Cox, Troy and Erica Tasker,
20 Debbie Shelley, Pasquale Shaver, Bishop Robert Frisby, Olga Stoddard, Robert Anderson,
21 Andy Nickle, Steve Lester, and Molly Stuart). Also, Mr. D. Bundy has reference letters from
22 family (See, Exhibit F, Letter from Shiree Cox, Westley Stoddard, and Patricia Meyers).

23 **C. There Are a Number of Stringent Conditions the Court Can Impose that will**
24 **Assure the Safety of the Community and Ensure Mr. D. Bundy's Appearance in**
25 **Court as Required.**

26 Title 18 U.S.C. §3142(e) provides that the court may fashion a combination of
27 conditions that will assure the appearance of the defendant, as well as the safety of the
28 community upon release pending trial. Mr. D. Bundy proposes the following conditions and

1 assures the Court that he will comply with all conditions and Court Orders if granted pretrial
2 release. Suggested conditions include:

- 3 (1) Mr. D. Bundy will have no weapons or possess any firearms;
- 4 (2) Forbidding Mr. Bundy from having contact with all other co-defendants in this
5 indictment unless approved by Pretrial Services for strategy for the criminal
6 case;
- 7 (3) Reporting on a regular basis to the Millard County Sheriff;
- 8 (4) Prohibiting Mr. Bundy from traveling to the Bundy Ranch unless approval by
9 pretrial services to visit mother, Carol Bundy;
- 10 (5) Prohibiting Mr. D. Bundy from piloting a plane except when necessary for
11 employment, ie. Local employment as a flight instructor in the Millard County
12 area of Utah;
- 13 (6) Imposing Electronic GPS Monitoring;
- 14 (7) Restricting Mr. Bundy's movement to the District of Utah and the District of
15 Nevada, and the strip area of Arizona;
- 16 (8) Imposing any other conditions or combination of conditions deemed reasonably
17 necessary to assure Mr. Bundy's appearance and to assure the safety of persons
18 and the community.

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CONCLUSION

Based on the reasons stated above, Mr. D. Bundy assures the Court that he will comply with all instructions and orders issued pending the resolution of this matter. Accordingly, Mr. D. Bundy respectfully requests that the Court grant his Motion to Reopen Detention Hearing issued by the Magistrate Judge in the District of Utah and release him pending trial with any conditions the Court deems necessary.

DATED this 21st day of April, 2016.

/s/ Cal J. Potter, III, Esq.
CAL J. POTTER, III, EDQ.
Nevada Bar No. 1988
C.J. POTTER, IV, ESQ.
Nevada Bar No. 13225
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, Nevada 89102

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to FRCP 5(b), I did serve at Las Vegas, Nevada on this 21st day of April, 2016 a true and correct copy of **DEFENDANT'S DAVID H. BUNDY'S MOTION TO REOPEN DETENTION HEARING PURSUANT TO FRCP 56(d)** on all parties to this action via CM/ECF system addressed as follows:

Joel F. Hansen
Hansen Rasmussen
1835 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Cliven Bundy

Ryan Norwood
William C. Carrico
Rene Villadares
Federal Public Defenders Office
411 E. Bonneville Ave.
Las Vegas, Nevada 89101
Attorneys for Ryan Payne

Joshua Tomsheck
Hofland & Tomsheck
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Peter T. Santilli, Jr.

...

...

1 Lucas Gaffney
2 Oronoz, Ericsson & Gaffney LLC
3 1050 Indigo Drive, Suite 120
4 Las Vegas, Nevada 89145
5 *Attorney for Melvin Bundy*

6 Brian James Smith
7 Law Office of Brian J. Smith, Ltd.
8 9525 Hillwood Drive, Ste. 190
9 Las Vegas, Nevada 89134
10 *Attorney for Gerald A. Delemus*

11 Jess R. Marchese
12 Law Office of Jess R. Marchese
13 601 South Las Vegas Blvd.
14 Las Vegas, Nevada 89101
15 *Attorney for Eric J. Parker*

16 Craig W. Drummond
17 Drummond Law Firm
18 228 South Forth Street First Floor
19 Las Vegas, Nevada 89101
20 *Attorney for O. Scott Drexler*

21 Shawn R. Perez
22 Law Office of Shawn R. Perez
23 626 South Third Street
24 Las Vegas, Nevada 89101
25 *Attorney for Richard R. Lovelien*

26 Richard E. Tanasi
27 601 South Seventh Street, 2nd Floor
28 Las Vegas, Nevada 89101
Attorney for Steven A. Stewart

Julian R. Gregory
Law Office of Julian Gregory
324 S. 3rd Street, Ste. 200
Las Vegas, Nevada 89101
Attorney for Todd C. Engel

Terrence M. Jackson
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Gregory P. Burleson

Andrea Lee Luem
Law Office of Andrea L. Luem
499 South 4th Street, Ste. 280
Las Vegas, Nevada 89101
Attorney for Joseph D. O'Shaughnessy

...

...

1 Chris Arabia
2 601 S. 10th Street
3 Las Vegas, Nevada 89101
4 *Attorney for Micah L. Mcguire*

5 Kristine M. Kuzemka
6 Kuzemka Law Group
7 9345 W. Sunset Road, Suite 100
8 Las Vegas, Nevada 89148
9 *Attorney for Jason D. Woods*

10 Erin M. Creegan, Esq.
11 Nadia Janjua Ahmed, Esq.
12 Nicholas D. Dickinson, Esq.
13 Daniel Bogden, Esq.
14 U.S. Attorney's Office
15 333 Las Vegas Blvd. South Suite 5000
16 Las Vegas, Nevada 89101
17 *Attorneys for Plaintiff*

18 /s/ Stacie Comerio
19 An Employee of Potter Law Offices
20
21
22
23
24
25
26
27
28